

This letter discusses statutory changes to the enterprise zone building materials exemption. See 35 ILCS 120/5k and 86 Ill. Adm. Code 130.1951. (This is a GIL.)

November 18, 2003

Dear Xxxxx:

This letter is in response to your letter dated March 8, 2003, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.1120. You may access our website at www.ILTAX.com to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

We were recently audited, and according to AUDITOR, the way our invoices were written, they did not qualify for the Enterprise Zone exemptions.

Since we are both a retailer and a subcontractor, most invoices for a subcontract are one lump sum. According to AUDITOR, if we write two invoices: one for materials only, and the other for labor to install, this would then put us in compliance and make the invoices eligible for the Enterprise Zone exemptions.

What I need from you is a written ruling stating that this is correct.

The Department's regulation for enterprise zone exemptions is at 86 Ill. Adm. Code 130.1951. As you may be aware, prior to January 1, 2002, in order to qualify for the enterprise zone building materials exemption from sales tax, the building materials had to be purchased from a retailer located in a jurisdiction (municipality or unincorporated area of a county) that created the enterprise zone into which the building materials were to be incorporated. Effective January 1, 2002, Public Act 91-0954 amended the Retailers' Occupation Tax Act at 35 ILCS 120/5k to remove the requirement that the retailer be located in the jurisdiction that created the enterprise zone into which the building materials

will be incorporated. In other words, purchasers can now make qualifying purchases from any retailer, including those located outside the State or even outside the U.S.

Effective January 1, 2002, there is no longer any requirement that the retailer be located in a municipality or county that created the enterprise zone into which the materials will be incorporated. However, any restrictions on the deduction contained in an ordinance in effect at the retailer's location control the sale.

Effective August 6, 2002, there is still no requirement that the retailer be located in a municipality or county that created the enterprise zone into which the materials will be incorporated. However, restrictions on the deduction contained in the ordinance in effect at the retailer's location no longer control the sale. Rather, the purchaser must obtain a Certificate of Eligibility for Sales Tax Exemption from the administrator of the enterprise zone into which the materials will be incorporated. That Certificate of Eligibility for Sales Tax Exemption will certify that the building project identified therein meets all the requirements of the enterprise zone ordinance of the jurisdiction in which the building project is located. In order to purchase building materials for that project tax-free, the purchaser must provide a copy of that Certificate to the retailer along with the purchaser's own certification that the materials will be incorporated into the building project identified in the Certificate of Eligibility for Sales Tax Exemption.

The exemption applies to both state and local sales taxes on qualifying building materials. Some examples of the kind of building materials that could qualify include common building materials such as lumber, bricks, and cement, plumbing systems and components thereof, heating systems and components thereof, electrical systems and components thereof, central air conditioning systems, ventilation systems and components thereof, built-in cabinets, and built-in appliances. Items that are not physically incorporated into the real estate cannot qualify for the exemption. Examples of this include tools, machinery, equipment, fuel, forms and other items that may be used by a construction contractor at an enterprise zone building site, but are not physically incorporated into the real estate, and free-standing appliances such as stoves and refrigerators if they are connected to and operate from a building's electrical or plumbing system but do not become a component of those systems. See 86 Ill. Adm. Code 130.1951(d) and (e) of the proposed regulations.

I hope this information is helpful. If you require additional information, please visit our website at www.ILTAX.com or contact the Department's Taxpayer Information Division at (217) 782-3336. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).]

Very truly yours,

Martha P. Mote
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